

February 11, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-132

TITLE: PLANS TO INCREASE PERFORMANCE-BASED APPROACHES IN REGULATORY ACTIVITIES

Commissioner Dicus approved the subject paper. Chairman Jackson and Commissioners Diaz and Merrifield approved in part and disapproved in part. Commissioner McGaffigan disapproved the paper. The Commission decisions on this paper are recorded in the Staff Requirements Memorandum (SRM) of February 11, 1998.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of February 11, 1998.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-98-132

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X	X			X	7/16/98
COMR. DICUS	X				X	11/17/98
COMR. DIAZ	X	X			X	7/24/98
COMR. MCGAFFIGAN		X			X	12/11/98
COMR. MERRIFIELD	X					11/6/98

COMMENT RESOLUTION

In their vote sheets, Commissioner Dicus approved the subject paper, Chairman Jackson and Commissioners Diaz and Merrifield approved in part and disapproved in part, and Commissioner McGaffigan disapproved the paper. Subsequently, the comments of the Commission were incorporated into the

guidance to staff as reflected in the SRM issued on February 11, 1998.

Commissioner Comments on [SECY-98-132](#)

Chairman Jackson's comments on SECY-98-132

I approve the staff soliciting input from the industry on performance-based initiatives that are not amenable to Probabilistic Risk Analysis as a part of DSI-13 meetings with stakeholders. However, prior to these meetings the staff should provide for ACRS and Commission review a structure or framework for soliciting input for performance-based initiatives. This structure should include likely issues to arise in these performance-based approaches, such as acceptance criteria for performance parameters. After the stakeholder meetings, the staff should then provide the Commission with its plan for pursuing performance-based initiatives that are not amenable to PRA, prior to expending additional resources in this area.

Commissioner McGaffigan's Comments on SECY-98-132

I have been troubled by this paper for some time. The staff and the Commission are clearly struggling with the concept of performance-based regulation and where it is appropriate to utilize performance-based (i.e., more flexible) versus prescriptive approaches. We have successfully applied the concept in some rules (Option B, Appendix J to Part 50, the proposed Part 63, perhaps the Maintenance Rule (50.65), and others). However, risk-informed regulation rests on a foundation of a Commission PRA Policy Statement, developed performance assessment and PRA technologies, and far more experience in applying these technologies. Performance-based regulation is lacking such a foundation.

This paper is an effort to begin the development of such a foundation. It points out both the promise of performance-based regulations in allowing licensees and the NRC to focus on results rather than prescriptive processes and the potential disadvantages, such as transition costs to both licensees and NRC, the incompatibility with usually highly prescriptive industry codes, etc. The paper does not give the staff much guidance on how to weigh potential benefits against potential costs in any particular rulemaking or other regulatory activity.

Further, as I noted in my vote on [SECY-98-144](#), performance-based regulation, as defined in that paper, lies between a totally prescriptive approach and an approach that would provide for unlimited licensee flexibility. Rules are going to be more or less performance-based, more or less prescriptive. One of the problems in pursuing performance-based regulation, evidenced by experience with the Maintenance Rule, is that there still is a degree of prescriptiveness in such a regulation and the amount of flexibility licensees expected may not match reality as inspections are carried out and the rule is enforced.

I therefore agree with Commissioner Diaz that the proposed plan needs to be improved before it is ready for implementation and I therefore disapprove it. I also agree with Commissioner Diaz on the notion of pilot projects and on the need for program offices to take the lead in this effort, as opposed to relying on RES. While I also agree with Commissioner Diaz that modification of Management Directive 6.3 is premature at this time, I do think the staff should be looking for performance-based opportunities in new rulemakings in at least a qualitative way. We could routinely request comment on proposed rules as to whether there are elements of the rule that are unnecessarily prescriptive, and deal with those comments in adjusting the final rule, as appropriate.

Finally, as I said in my vote on [SECY-98-144](#), I do not think we have defined what performance-based inspection of a prescriptive rule means. If such inspection emphasizes results rather than whether the results were achieved through a process prescribed by rule, then is the inspection turning a prescriptive rule (say Option A, Appendix J) into a performance-based rule (Option B, Appendix J) through inspection? If there is a prescriptive process mandated by a rule that we no longer care about, provided the results are acceptable, then that rule would be a strong candidate for an immediate performance-based rule change.

Commissioner Merrifield's comments on SECY-98-132

I concur with the comments of Chairman Jackson.